

16-10-06
Single Bench

IN THE HIGH COURT JUDICATURE AT BILASPUR

SECOND APPEAL NO. 329 OF 2006

APPELLANTS:

(Defendants No.1 & 2)

1. Bhukan Kurmi, aged about 61 years, son of Late Deena Kurmi, resident of Village Kurru, Tehsil Abhanpur, District Raipur.
2. Naresh, son of Bhukan Kurmi, resident of Village Kurru, Tehsil Abhanpur, District Raipur.



Vs

RESPONDENTS:

Plaintiff

P.R. No. 2077/06
Presented by Shri. B.P. Sharma
dated 21/7/06

Defendant No.3

1. Smt. Gajra Bai, aged about 45 years, widow of Late Buddhu Kurmi and daughter of Late Keju Ram Verma, presently residing at Railway Colony, Maroda, Bhilai, Tehsil & District Durg (C.G.)
2. State of Chhattisgarh, through the Collector, Raipur.

REC-VED-COPY
21/7/06
CLERK to A. G. BILASPUR

Civil Suit valued at Rs.860/- & court fee affixed Rs.100/-
First Appeal valued at Rs.860/-
Court fee affixed was Rs.100/-
This appeal also valued at Rs.860/-
Court fee affixed Rs.100/-

**APPEAL UNDER SECTION 100 OF CODE OF CIVIL
PROCEDURE, 1908**

मामला क्रमांक ..S.A.No.:329/.... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -1-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>30/11/2006</u> Appellants by Shri B.P. Sharma, Advocate. Respondent No.1 by Shri Manoj Paranjape, Advocate. Respondent No.2/State by Shri Sanjay Shyam Agrawal, G.A. Heard on admission. Being aggrieved by the judgment and decree passed in Civil Appeals No.37-A/2005 and 69-A/2005 by the District Judge, Raipur, the defendants/appellants have preferred this second appeal. Brief facts are that Smt.Gajra Bai, respondent No.1/plaintiff instituted a Civil Suit No. 45-A/2005 against the appellants/defendants No.1 & 2 and the State of Chhattisgarh for declaration that she is the owner of the agricultural lands in area 3 acres situated in village Kurru, Patwari Halka No.141 by virtue of a registered sale deed dated 03.07.1974 executed by the appellant No.1-Bhukan Kurmi in her favour, for possession of the aforesaid lands and for permanent injunction against the defendants/appellants No.1 & 2. The learned 2nd Civil Judge Class-II, Raipur, vide judgment and decree dated 30.07.2005 recorded a finding of fact in favour of the respondent/plaintiff that she was the owner of the suit lands by virtue of the registered sale deed dated 03.07.1974 executed by Bhukan Kurmi, the appellant No.1 herein. However, on a finding that the suit was barred by limitation under Article 65 of the Limitation Act, 1961, the learned lower Court dismissed the suit. The plaintiff/respondent No.1 Smt. Gajra Bai	

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	preferred an appeal (Civil Appeal No. 37-A/2005) against the said judgment. The defendants/appellants also preferred a cross-appeal (Civil Appeal No. 69-A of 2005) against the aforesaid finding recorded by the learned lower Court. Vide Judgment and decree dated 10.05.2006, the learned District Judge dismissed the cross-appeal No.69-A of 2005 while affirming the finding of fact recorded by the lower Court that Smt. Gajra Bai had acquired title over the suit lands by virtue of a sale deed executed by the appellant No.1/defendant-Bhukan Kurmi on 03.07.1974. The learned District Judge allowed Civil Appeal No. 37-A of 2005 preferred by the plaintiff/respondent No.1-Gajra Bai while holding that the suit was within limitation since it was for possession on the basis of title and was within limitation of 12 years prescribed under Article 65 of the Limitation Act, 1963, which would start to commence from the date when the possession of Bhukan Kurmi became adverse to that of Smt. Gajra Bai. In this view of the matter, there is a concurrent finding of fact recorded by both the Courts below that Smt. Gajra Bai, respondent No.1/plaintiff, had acquired title over the suit lands by virtue of a sale deed dated 03.07.1974 executed by Bhukan Kurmi. It was urged by Shri B.P.Sharma, learned counsel for the appellants/defendants that the only question of law that arises for determination is as to whether both the Courts below were right in shifting the burden of proof of the registered sale deed dated 03.07.1974, not having been executed by Bhukan Kurmi, on the defendants. Reference was made to paragraph 12 of the judgment of the trial Court wherein it was observed that the defendants ought to have got the thumb impression on Ex.p.1 examined by a Finger Print Expert, which it had failed to do. No	

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	other point was urged by the learned counsel for the appellants/defendants in this appeal. On the other hand, Shri Manoj Paranjape, learned counsel for respondent No.1/plaintiff urged that there was a concurrent finding of fact recorded by both the Courts below that Smt. Gajra Bai had acquired title over the suit lands by virtue of a registered sale deed Ex.p.1 executed by Bhukan Kurmi in favour of Smt. Gajra Bai on 03.07.1974. It was also urged that the plaintiff had produced the primary evidence i.e. the registered sale deed Ex.P.1 and had not only examined herself but had also examined Harish Chandra P.W.2 to prove the signatures of the attesting witness Lainuram on the sale deed. In this manner, the plaintiff had discharged its burden. Besides, the plaintiff had also proved Ex.p.3, a sale-deed executed by Bhukan Kurmi in favour of Nathu on 09.03.1962 wherein Bhukan had affixed his thumb impression. It was for the defendants/appellants to get the thumb impression of Bhukan Kurmi examined by a Finger Print Expert and to prove such opinion in the Lower Court. It was urged that no substantial question of law was thus involved in the second appeal which was liable to be dismissed at the stage of admission. Having heard rival contentions, I have perused the record. There is a concurrent finding of fact recorded by both the Courts below that Smt. Gajra Bai acquired title over the suit lands by virtue of a sale deed dated 03.07.1974 executed by Bhukan Kurmi in her favour. The plaintiff Smt. Gajra Bai had produced and proved the primary evidence viz. the registered sale deed itself by examining herself as also Harish Chandra	

मामला क्रमांक 5A 329/06 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - ५ -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	P.W.2 to prove the signatures of the attesting witness. In this manner, the plaintiff had discharged its burden of proving the registered sale deed Ex.P.1. The defendants made no efforts to get the finger print of Bhukan Kurmi examined by a Finger Print Expert and to seek and produce such evidence before the Court. In this view of the matter, the finding recorded by both the Courts below being a finding of fact, no substantial question of law is involved in this second appeal, which is liable to be dismissed at the stage of admission. Consequently, this Second Appeal is dismissed at the stage of admission. M.C.P.No.1241 of 2006 for stay is also disposed of. Interim stay ordered on 07.08.2006 stands vacated.	Sd/- Dilip Raosaheb Deshmukh Judge

P.T.O.

Angani
06/12/06